IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 266 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BARKHA INVESTMENTS & TRADING CO - Applicant(s)

Versus

COMMISSIONER OF INCOME TAX - Respondent(s)

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Appearance :

MR MANISH J.SHAH FOR MR JP SHAH for Petitioner No(s).: 1.

MR MANISH R BHATT for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 12/07/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The following question has been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' under Section 256(1) of the Income Tax Act,1961 (the Act) at the

instance of the revenue.

> "Whether on the facts and in the circumstance of the case, the assessee company was a financial company / investment Company under sub-clause (ii) of clause (c) of explanation to sub-section (8) of section 40A and therefore, no disallowance is to made under the said sub-section from its expenditure by way of interest paid by it on deposits ?"

2 The Assessment Year is 1983-84. It is not necessary to set out the facts and contentions of the parties in detail in light of the fact that the Tribunal has decided the controversy between the parties by following its own order in case of the assessee for Assessment Year 1982-83. The said matter had travelled by way of Reference being Income Tax Reference No.52 of 1993. This Court has rendered its judgment on 12/13-04-2005. It is common ground between the learned Counsel appearing on behalf of the respective parties that the aforesaid judgment rendered in ITR No.52 of 1993 would also govern the present Reference and the question requires to be answered accordingly.

3 In Income Tax Reference No. 52 of 1993 this Court has made the following directions :

> "37. Therefore, in the facts and circumstances of the case, it is apparent that the Tribunal has committed an error in law in holding that the assessee company was not a "financial company" within the meaning of clause (c) of

Explanation to sub-section (8) of Section 40A of the Act. At the same time, it is necessary to take note of the fact that the communication dated 22nd April, 1981 produced by the assessee apparently pertains to the period prior to 30th August, 1980 or 30th December, 1980. The relevant accounting period for the assessment year is calender year 1981. As per the Directions of RBI, a NBFC is required to furnish the relevant information by way of return accompanied by annual accounts. In these circumstances, it is necessary that before finally deciding as to whether for the year under consideration any portion of interest is required to be disallowed under Section 40A(8) of the Act, the assessee is permitted an opportunity to place on record the relevant details and information, including certificate from RBI for the relevant period. It will also be open for the Tribunal to consider the nature of transactions entered into by the assessee company in light of the principles laid down by the Court pertaining to the acquisition and holding of shares and securities i.e. whether the same have been transferred in the name of the assessee company before the assessee company dealt with such shares and securities during the relevant accounting period.

38. In the result, the question is decided accordingly in light of the principles set out hereinbefore and the Tribunal shall decide the appeal and adjust its decision in light of the aforesaid principles while finalizing the appeal under Section 260(1) of the Act.''

The same directions are applicable for the Assessment Year under consideration.

39. The reference stands disposed off accordingly. There shall be no order as to costs.

[D.A.MEHTA,J] [H.N.DEVANI,J]

m.m.bhatt